## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION Case No. 7:23-CV-01460-M-BM

SN PROPERTIES OF LUMBERTON, LLC,	)	
Plaintiff,	)	
37	)	ORDER
V.	)	
PARKTON MHC LLC,	j ,	
Defendant.	)	

These matters come before the court on the Defendant's Motion to Dismiss the Plaintiff's Complaint [DE 14] and Plaintiff's Motion for Leave to Amend Complaint [DE 21]. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), United States Magistrate Judge Brian S. Meyers issued a memorandum and recommendation ("M&R"), recommending that the court grant in part and deny in part both motions and permit Plaintiff to amend the operative pleading in substantial part. DE 27. Judge Meyers instructed the parties to file any written objections to his recommendation on or before August 22, 2024. *Id.* at 23. To date, no objections have been filed.

A magistrate judge's recommendation carries no presumptive weight. The court "may accept, reject, or modify, in whole or in part, the . . . recommendation[] . . . receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); accord Mathews v. Weber, 423 U.S. 261, 271 (1976). The court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1). Absent a specific and timely objection, the court reviews only for "clear

error" and need not give any explanation for adopting the recommendation. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Upon careful review of the M&R and the record presented, and finding no clear error, the court ADOPTS the recommendation of the magistrate judge as its own. For the reasons stated therein, Plaintiff's motion to amend complaint [DE 21] is GRANTED IN PART and DENIED IN PART and Defendant's motion to dismiss [DE 14] is GRANTED IN PART, DENIED IN PART, and DENIED AS MOOT IN PART as follows:

## 1. Regarding Plaintiff's motion for leave to amend complaint:

- a. Plaintiff is GRANTED leave to file the amended complaint removing the claim of conversion, and including the claims for: (i) breach of contract; (ii) unjust enrichment (in the alternative); (iii) breach of the implied covenant of good faith and fair dealing; and (iv) unfair and deceptive trade practices.
- b. Plaintiff's motion to amend is DENIED as to: (i) its claim for recovery of attorney's fees, and (ii) declaratory judgment.
- c. Plaintiff's motion to amend is DENIED WITHOUT PREJUDICE as to the claim for misappropriation—injunction.
- d. Plaintiff shall file an Amended Complaint consistent with this order and the M&R on or before September 19, 2024. Defendant shall file an answer or other response to the amended pleading in accordance with Rule 15 of the Federal Rules of Civil Procedure.

## 2. Regarding Defendant's motion to dismiss:

- a. As Defendant does not oppose Plaintiff's (i) amendment of its claims for breach of contract, or (ii) removal of its conversion claim, Defendant's motion is DENIED AS MOOT regarding the same.
- b. Defendant's motion is DENIED as to Plaintiff's claims for (i) unjust enrichment (in the alternative), and (ii) unfair and deceptive trade practices.
- c. Defendant's motion is GRANTED, in that Plaintiff's claims for (i) declaratory judgment is DISMISSED, and for (ii) an injunction is DISMISSED WITHOUT PREJUDICE.

3.	Within 14 days from the date of entry of this order, the parties shall confer regarding
	further scheduling and discovery matters, and shall file a joint status report, or revised
	Rule 26(f) report, advising the court of the parties' position(s) with regard to the same.

SO ORDERED this \_\_\_\_\_ day of September, 2024.

RICHARD E. MYERS II

CHIEF UNITED STATES DISTRICT JUDGE